Marine Policy 98 (2018) 317–324

Contents lists available at ScienceDirect

Marine Policy

journal homepage: www.elsevier.com/locate/marpol

Concluding article: The changing regulatory landscape of the Baltic Sea – An analysis

Henrik Ringbom[a,b,*], Marko Joas[c]

[a] Scandinavian Institute of Maritime Law, Faculty of Law, University of Oslo, Norway
[b] Department of Law, Faculty of Social Sciences, Business and Economics, Åbo Akademi University, Gezeliusgatan 2, 20500 Turku/Åbo, Finland
[c] Public Administration, Faculty of Social Sciences, Business and Economics, Åbo Akademi University, Fänriksgatan 3, 20500 Turku/Åbo, Finland

ABSTRACT

The concluding chapter summarises the contributions of the special issue and draws cross-sectoral conclusions on the trends in development. The chapter analyses the findings of the BaltReg-project, an inter-disciplinary project that focused on the governance structures in the BSR and changes within those structures. Aspects of BSR governance are studied through a legal and a social science perspective. The research firstly provided a general 'birds-eye' perspective of the governance structures in the region and, secondly, a sector-based analysis of selected themes within environmental governance. The findings indicate a highly complex yet functional governance structure for the Baltic Sea that has developed especially since the end of the cold war. The key regulatory layers have become increasingly intertwined, with the EU as the clearly dominating actor within the BSR, regarding legislation as well as other steering mechanisms. The way to govern has also changed. The move towards ecosystem-based management signifies a development from hard, specific rules towards soft and process-oriented rules. Complex problems (like eutrophication and climate change) do not have simple solutions, therefore a mix of governance tools is needed. Even though there is no optimal way to govern different problems related to marine areas, it appears sensible to listen to the policy environment – natural, political and human – when creating institutions to deal with problems at hand. Flexible and adaptive governance mechanisms are needed to protect the Baltic Sea from multiple threats.

1. Introduction - questions

The focus of this special issue has been the structure of environmental governance in the Baltic Sea Region (BSR). The study is undertaken, firstly, through a general 'birds-eye' perspective of the general governance picture in the region and, secondly, through a sector-based review of certain specific themes of environmental governance with a view to studying the 'anatomy' of multi-level regulation and governance in more detail for individual sectors. The main focus is on the regulatory (legal) tools, but the study also includes a review of other steering mechanism that support governmental action.

The objective of this concluding chapter is to assess whether there are certain conclusions to be drawn from the individual contributions in this volume. What are the trends in development, are there general patterns that can be discerned, or perhaps even knowledge that could be learned with respect to multi-level governance?

2. Institutional mapping of the Baltic Sea

The first two contributions (Grönholm, Engström) illustrate that a very rich flora of institutions are active in the BSR and that there is a significant overlap of – political and regulatory –functions between them. This calls for a horizontal interaction between the institutions and a vertical delimitation of their tasks and competences. It also raises questions about the effectiveness of the current institutional setting more generally.

An analysis of the constitutional foundation of the organizations governing the region (Engström) reveals that most of the organizations have a weak foundation, in terms of international law. Organizations which do not have a solid international legal basis will be restrained in

Abbreviations: BDF, Baltic Development Forum; BSAP, Baltic Sea Action Plan; BSR, Baltic Sea Region; CBSS, Council of the Baltic Sea States; EAM, ecosystem-based approach to management; EBSA, Ecologically or Biologically Significant Marine Area; EUSBSR, European Union Strategy for the Baltic Sea Region; HELCOM, Baltic Marine Environment Protection Commission, Helsinki Commission; IMP, integrated maritime policy; MSFD, Marine Strategy Framework Directive; MSPD, Directive on Maritime Spatial Planning; SDG, Sustainable Development Goal; TFEU, Treaty on the Functioning of the European Union; WFD, Water Framework Directive

* Corresponding author.
E-mail addresses: henrik.ringbom@abo.fi (H. Ringbom), marko.joas@abo.fi (M. Joas).

https://doi.org/10.1016/j.marpol.2018.09.029
Received 17 September 2018; Accepted 25 September 2018
Available online 05 October 2018
0308-597X/ © 2018 Elsevier Ltd. All rights reserved.

contributing to solutions of a legal nature, such as the adoption of new rules or the effective enforcement of existing ones. Out of the multitude of governmental co-operation bodies and platforms that operate specifically in and for the BSR, only one, HELCOM, is a traditional, clear-cut intergovernmental organization based on a classical founding treaty (the Helsinki Convention). This solution provides, at least in theory, a solid platform for further regulatory developments. In practice, however, HELCOM, too, tends to favour non-binding rules (recommendations) as a principal governing tool. Other key organizations, such as the Council of the Baltic Sea States (CBSS) or the Baltic Development Forum (BDF), are not established by treaty and have no legislative or regulatory powers in a formal sense. However, as political arenas for nation states to meet, discuss and define policy goals these organizations clearly have a role in BSR governance. The article on CBSS has highlighted the challenges linked to the uncertain legal status in some more detail (Rosas & Koivurova), but this is a feature which also appears in other contributions, such as the one dealing with marine border control in the Baltic Sea area (Gustafsson).

An imbalance accordingly appears to have emerged between the high number of institutions which are equipped to identify and discuss the region's challenges and the very few institutions that actually can take measures to change the situation in a traditional regulatory sense.

This imbalance has to a large extent been compensated by the EU's enlargement to all but one Baltic Sea coastal states in combination with the increased interest and activity of the EU in matters related to marine governance, including multi-level governance measures at sub-regional and sub-national levels. The EU's relevance to governance in the Baltic Sea runs like a red thread throughout the contributions in this issue, and is not limited to regulatory measures but extends to other governance tools as well.

Yet the EU's capacity to act effectively in the region is constrained by important limitations with respect to scope (not all Baltic Sea states are EU members), content (not all subject matters are EU-wide concerns or subject to EU competence) and procedure (non-Baltic region states represent a majority in the EU). The analysis by Engström indicates a paradox in that the benefits of a more involved EU can only be capitalized if the EU takes a very active role in the field and makes use of its regulatory competences in a proactive manner. If not, the EU's involvement may even have the effect of hampering regulatory initiatives for the region.

The added value of the multitude of governance structures lies outside the realm of regulation. The richness of governance tools contribute to smart, flexible policy solutions to deal with complex policy challenges. The policy tools include innovative and flexible multi-actor and multi-level additions to traditional regulation, this is especially optimal for complex problems that cannot be solved, or hardly even approached, within traditional legal boundaries. Multi-level governance activities can be defined as (partly informal) facilitators of horizontal and vertical coordination within the BSR (Grönholm). The multi-level approach increases the number of involved actors, enhances the legitimacy for action within and outside the scope of traditional government structures and accelerates policy change, partly by-passing the formal 'chain of command' that applies to regulation. In this area, too, it is increasingly clear that the EU is actively seeking a regional role. This includes strategic governance (such as the EU Strategy for the Baltic Sea Region, the EUSBSR) supported by sectoral as well as regional funding mechanisms (e.g. implementation measures for regional cohesion policies, such as the Interreg programs).

In his network mapping analysis, Grönholm looks at no less than 24 key network-based actors in the BSR. These networks cover different areas of interest, multiple areas and are based on different institutional bases – ranging from treaties for IGOs (HELCOM and Nordic Council and Nordic Council of Ministers) to more or less self-organizing sub-national cooperation networks based on internal statutes (such as the Union of Baltic Cities). The roles and responsibilities of the key players in the BSR vary depending on the focus and scope of the actor, its membership as well as the constitutional basis.

Grönholm also notes that many governance tools show important shortcomings. Network governance is too often based on limited funding, project type approaches, which tend to limit the outcomes, both in scope and time. Institutional learning is thereby hard to achieve.

It is obvious that transnational actors, including the EU, can achieve complex policy goals more easily by soft governance tools that allow influencing non-state as well as regional and local governmental actors. The track is shorter, more direct, and the pay-off is quicker (provided that the network tools work). In addition, they provide a mechanism for including non-member states, such as Russia.

For Russia, however, it is of high importance to be considered an equal partner to the EU. HELCOM – as the only traditional IGO covering the entire BSR – has an important role in environmental policy making and implementation for Russia and thereby also for the entire BSR. Cooperation is generally smooth, especially compared to present political tensions between Russia and EU. Within HELCOM too, however, additional policy tools, such as economic steering instruments, are increasingly being used as a complement to regulation by hard and soft law. International projects support the implementation of environmental policies in Russia, especially in regional and local settings (Tynkkynen).

3. Cross-sectoral analysis

3.1. Framework for analysis

The main part of the study consists of case studies of different regulatory sectors undertaken in articles of this special Issue above. Clearly, the studies do not cover the entire field of environmental governance in the Baltic Sea, but they do represent a selection of relevant topics of an international nature that are subject to multi-level regulation and cover issues of current relevance in contemporary Baltic Sea governance. All chosen sectors are governed by legislation at multiple levels, hence giving rise to issues related to hierarchy and complementarity between the layers. The chosen examples range from issues where the role of the different regulatory layers is well-defined and policies tend to complement and support each other (e.g. pollution from ships) to issues where the difference between the roles of the layers is not so clear and several layers use the same tool for reaching its purpose (e.g. the role of the Baltic Sea Action Plan (BSAP) in regulating eutrophication or the use of maritime spatial planning at different scales).

On the basis of a systematic assessment of different sectors, the ambition was to find answers to questions relating to the interplay between different regulatory layers and between different steering mechanisms. Key questions include: How do the regulatory layers interact; what complementarity is there in terms of the substance, process and legal strength of the instruments (are they 'soft' or 'hard' specific or open-ended etc.); and how does the interaction between law and other policy instruments work? Does practice match the expectation that the presence of non-legal steering mechanisms is more limited where regulation is normatively strong and precise and, conversely, do other steering mechanisms thrive in areas where regulation is either 'soft' in character or otherwise very vague? Or, are these different governance institutions just complementary policy instruments as suggested by governance theory?

Different (horizontal) governance layers and mechanisms operate differently in different (vertical) substantive sectors. Whereas drawing conclusions regarding the individual sectors are the task of the individual contributions, this concluding chapter will consider horizontal, cross-sector, inferences that arise from the chapters (Section 3.2) and offer some more general observations on interactions between legal layers and other instruments (Section 3.3).

3.2. A horizontal analysis - general tendencies

A review of the ten substantive case studies reveals certain general tendencies, which seem to apply for any of the topics studied, and may hence be assumed to be expressive of the governance situation more generally in the Baltic Sea region. To begin with, all subject areas covered here are addressed at multiple regulatory levels, not only by multiple layers of rules, but also by a mix of hard and soft rules, and a mix of law and other governance tools. While the mix and emphasis between the elements vary largely from one field to another, it seems safe to conclude that governance complexity in all fields has grown considerably.

Even if this study does not include a historical perspective, it is evident that much of this complexity is of relatively recent date. Key developments include the active re-organization of the policy scene in the region in the early 1990's, the successive enlargements of the EU and the development of the EU's integrated maritime policy and macro-regional strategy for the region on this side of the Millennium shift. It is quite clear, thus, that the EU has taken a very large role in developing governance institutions and instruments in the region despite the incomplete coverage of membership in the BSR. This contrasts with other regions, such as the North Sea, where the EU has not been as active, e.g. in relation to developing a macro-regional strategy despite total EU/EEA membership among the littoral states. Indeed, the presence of at least one non-EU member state appears to be a common feature of the EU's macro-regional strategies suggesting that a broader application of EU policies in one of the purposes underlying such strategies.

3.2.1. International governance

The international regulatory layer of global scope appears to have a decisive role on how the material regulatory policies develop at regional (Baltic Sea) level. The case studies above cover the full spectrum, from sectors, such as shipping, with comprehensive and detailed global rules and where the need for regional rules is questioned to sectors, such as energy, where no global rules exist.

The presence of global rules in a given sector determines the need for and character of regional action. If the subject area in questioned is fully covered by global rules there may not even be a need for independent regional regulation while, conversely, the absence of global rules highlights the need for supplementary regional action to fill the regulatory gap.

The reason for the absence of global rules appears to be decisive for how regional governance is organized. In some cases the absence of global rules is simply due to the absence of a global need for such rules. With respect to eutrophication, for example, the natural characteristics of the Baltic Sea are unique and most other maritime regions have no need for such regulation. Even where similar concerns exist, the institutional settings may differ even if the practical solutions in the end are almost identical (Jetoo). This case, an acute and well-known environmental threat that is specific for the region, represents one of the few examples where specific regional rules, both hard and soft, have been developed for the BSR.

By contrast, where the lack of global rules is due to political difficulties to agree on global rules (land-based sources of marine pollution, climate change, energy security, border management), those difficulties are likely to persist at regional level. In those areas, relatively little emphasis has been placed on the regional institutions. Rather, the initiative has been handed over to the EU, representing a new player entering the scene with flexibility to act at through a broad range of steering instruments at all governance levels.

The presence of global rules tends to make regional governance easier in practice. Where there are already global rules in place, the regional level can serve to implement and bring added value to international conventions, without needing to adopt controversial policies of its own. From the outset, Baltic Sea environmental rules, as laid down in the Helsinki Convention, have focused on implementing international rules on dumping, ship-source pollution and general principles for land-based pollution, and this remains the case today. The EU, too, appears to find its role easier in sectors that are already regulated (and widely accepted) at global level, and which do not require very different measures within different parts of the Union, including shipping and climate change. In this respect it is worth noting that global rules increasingly tend to delegate implementation to regional organizations (such as the bottom up approach of the Paris Agreement on Climate Change and the adoption process of 'Ecologically or Biologically Significant Marine Areas' (EBSAs) under the Convention on Biological Diversity).

With respect to global non-binding principles, declarations, resolution etc. those effects are not so evident. It is less common for the EU to transfer the status of such principles into binding EU law. However, in certain cases HELCOM has assumed a role to implement such global soft law tools, such as the Sustainable Development Goals (SDGs) of the United Nations Agenda 2030, where it has been agreed to "use HELCOM as the regional arena for coordinating work on those SDGs that relate to marine and water issues" [1] and, most recently, through the elaboration in 2018 of nine EBSAs for approval under the Convention on Biological Diversity see [2,3].

In the complete absence of any global rules the character of the regional effort moves away from mere implementation, which leaves more flexibility for the regional response and places more demands on its creativity. Indeed, an earlier study of regulatory gaps in the Baltic Sea even proposed that without global rules, states appear less likely to take regulatory action at regional level at all [4].

3.2.2. Nation states

The foundation of the multi-layered legal landscape in the region has traditionally been the national governance institutions and legal systems of the nation states. This remains the case today. Even under international regimes, national laws reflect the policies and priorities of the individual states, and goal-oriented rules tend to offer even more latitude for states in this regard. Furthermore, and in any case, implementation and enforcement relies heavily on the priorities, resources and governance capacity of the states concerned.

The states around the Baltic Sea represent quite different legal and administrative traditions and their national legal systems vary significantly. The political preferences within the Baltic Sea states – as well as values and public opinion – show significant variations [5], which at least to some extent follow their earlier development relating to, for example, environmental policy progress [6,7].

Both global and EU environmental rules are generally in the form of minimum standards which nation states are free to exceed. Currently, however, there are few regulatory incentives to exceed the minimum requirements. Differences are therefore often, especially towards the EU, based on earlier achieved levels, less on actively seeking possibilities to exceed international demands, with the exception of few policy leaders (that may change over time and policy sector). The main benefit lies therefore within the harmonizing effect. Economic incentives are naturally present, through the EU and other international funding mechanisms, for national and as well as sub-national activities if national and local resources are considered limited.

3.2.3. Sub-national governance

Finally, within the littoral states in the BSR, environmental policy implementation, law enforcement authority and even norm creation is to some extent delegated to sub-national entities, such as regions and local governments. Some of them even have an autonomous status with state-like features, such as the Åland Islands in Finland. The degree of decentralisation or delegation varies, however, depending on both sector and national policies of the state concerned. In general, the Nordic countries tend to have rather autonomous local governments, resulting in a more decentralised division of powers. Regional and local levels are clearly key actors when it comes to creating successful

policies and policy implementation. The impact from policy activities from the governance level closest to the people – local governments – leads to better knowledge of suitable local measures and higher acceptance and legitimacy for policies. Thus, local activities tend to have a better success rate of the policies in the end [8].

In reality, of course, the EU affects not only the members states which have to transpose EU law into national law, but also a range of sub-national authorities, such as regional and local governments. The role of sub-national entities in implementing rules adopted at international or EU level has long been instrumental, but their influence in decision-making processes has been strengthened, as is made particularly clear in the Treaty on the Functioning of the European Union (TFEU) and exemplified in some of the text discussed here, notably regarding planning and permitting activities (e.g. Westholm).

It is also obvious that the sub-national governance level is highly active in network creation both at regional level, but increasingly also at EU-level (Grönholm). Local and regional governments have significantly increased their presence and impact on the international scene, through organizations such as the Union of Baltic Cities or the B7 Baltic Islands network, both worldwide and in an EU context.

3.3. The European Union in the Baltic Sea region

The sector-based analyses clearly underscore the point already made in the introduction, that the EU has occupied an increasingly active role in the governance of the Baltic Sea. This is true for legislation, where the intergovernmental aspects of many sectors are regulated only at EU-level (energy, border management), but is also true for many other types of governance mechanisms (e.g. the EUSBSR and the vast system of various 'soft' implementation tools and funding schemes for regional development, infrastructure and science). The 'Europeanization' (federalisation) of the governance of the Baltic Sea has been particularly intense in the past two decades and has profoundly changed the governance landscape in the region. In fact, the EU-layer is dominant and the most dynamic inter-state player in all of the sectors reviewed, the only potential exception being shipping where regional legislation has been politically unthinkable until a few decades ago.

In view of the EU inherent nature and origin, strongly rooted in the free market tradition, the EU has not traditionally taken an active regulatory role with respect to concerns that are particular to one sub-region only, such as e.g. eutrophication in the Baltic Sea. The EU principal efforts are directed at harmonizing rules and there has been an inherent reluctance to laying down different material rules in different parts of the EU.

The development towards an ecosystem-based approach to management (EAM), as defined in key regulatory instruments, over the last two decades, the EU has also been able to "sub-regionalise" its marine policy to different marine regions within the Union (Kern & Söderström). Through its 'integrated maritime policy' (IMP) the EU has contributed with new regulatory approaches (i.e. a formalisation of the ecosystem approach with adaptive assessments, goal-oriented regulation and wider involvement of stakeholders). This policy permits sub-regional differentiation through the regional seas bodies (to which the EU is a formal member), notably by giving HELCOM a key role in implementing the Marine Strategy Framework Directive (MSFD) and the Water Framework Directive (WFD), through the BSAP. This type of sub-regionalisation of EU maritime policy is a relatively recent phenomenon, and has come at the expense of legal specificity and clarity.

The nature of the EU role in a given sector also appears to depend on the chronology of events. Where there was a functioning governance system in place before the EU got active (e.g. in shipping or general Baltic Sea environmental protection through HELCOM), the Union has tended to settle for a more low-key role that supplements the existing governance framework. By contrast, a more normative role is taken in sectors where no international legislation exists, such as marine management, marine spatial planning or, most recently, prevention of marine pollution by plastic products see e.g. [9,10].

The EU involvement also involves drawbacks for states, however. The Union's entry into the regulatory sphere in marine governance, has sometimes led to more caution among states to agree on recommendations at HELCOM in fear of the recommendations being 'picked up' by a future (binding) EU Directive (Söderström & Kern). A closer link between HELCOM and EU rules has also affected to some extent Russia's willingness to participate in HELCOM (Söderström & Kern, Tynkkynen). Moreover, the transfer of external competence from member states to the EU that the adoption of EU legislation entails has in some cases led to halting negotiations/actions at other regional and global regulatory levels.[1] It is still unclear to what extent the new generation of ecosystem-based marine directives (MFD, MSFD, MSPD) have such effects on member states' future negotiation competence for an overview of the developments on the law relating to EU external competences, see e.g. [11]. In view of the broad scope of the directives listed above, a claim for exclusive competence across the board would have very important repercussions on member states' ability to discuss matters related to oceans and marine governance independently.

Finally, it was already noted that the EU regulation affects not only the member states, but also various sub-national authorities. In view of this, regional and local authorities have increasingly started to influence decision-making, not only in the national capitals but also in Brussels.

3.4. Everything flows

Another principal observation that follows from the individual contributions in this volume is the increasing entanglement and interdependency of norms of different levels and character. The development in environmental governance in the past decades has given rise to increasingly blurred distinctions between, for example, hard and soft rules (Bohman), layers of rules (Westholm, Keessen, Langlet) and regulatory tools (Jetoo). As has been noted elsewhere, hierarchical relations in Baltic Sea governance have developed into vertical interdependent relations and new scaling strategies have emerged, such as local and regional authorities bypassing national governments [12]. Some general observations that follow from the case studies are highlighted below.

3.4.1. Mixing layers

The regulatory layers are increasingly entangled with each other. From a legal perspective, the relationship between global international law and regional international law is still fairly straightforward. Regional conventions generally do not introduce new standards competing with the global ones, but rather implement the global rules, or find niches to play a useful role where gaps exist in the global regulation (Ringbom, Backer).

The position of EU law is more complex as it mixes with international law, both at global and regional level. The more precise relationship depends on a variety of circumstances that need to be assessed case by case. EU's formal acceptance of international conventions, or copying of their provisions, brings several forms of regulatory added values within the EU, including increased normative authority of the rules and, hence, more rigorous implementation & enforcement tools. EU's formal acceptance of international conventions also changes the hierarchical position of the rules, signifies a (partial) inclusion of the international rules into the EU legal order and gives rise to direct effect/applicability, which in turn allow for targeting a wider range of addressees. As for matters analysed here, the EU is a party to HELCOM and a number of global conventions, including UNCLOS, the

[1] See e.g. the example of sulphur emissions from ships as discussed in Ringbom and Backer.

Paris Agreement and the Convention on Biological Diversity.

Outside formal legal relationships, other international layers are mixed in a variety of ways. Global, international non-binding commitments and guidelines are implemented through multiple channels simultaneously. Especially in the environmental policy sphere, even non-binding documents tend to guide the behaviour of states and governance levels, particularly in the longer run. This was evident regarding UN-based Agenda 21, as well as it will be regarding the similarly process-oriented UN document on Sustainable Development Goals (SDG). These goals will serve as a baseline level for policy measures in several policy sectors at national as well as EU and HELCOM levels.

One obvious and usually effective way to strengthen the impact of non-binding rules is through funding. The multi-dimensional governance structure in play becomes particularly clear in the EU, as the different regional (and sectoral) funding mechanisms are analysed more closely. The EU can relatively easily promote common policy goals at least to some extent by-passing national governments through regional and sectoral funding mechanisms. This combination of cohesion funds, macro-regional strategies (in our case, the EUSBSR) and active co-operation with non-EU states all aim at policy harmonization on a larger regional scale than before [13].

3.4.2. Mixing rules and tools

International and EU environmental rules address a variety of very complex issues, including climate change, marine policy and water framework rules. The desire to maintain the mandatory nature of the rules while still allowing for a flexibility in the regulatory approaches, has led to increasing use of bottom-up approaches to regulation. In this model the framework legislation only establishes certain general goal to be achieved and provides the basic elements for a process to ensure that those objectives are achieved. While the goals are mandatory, they are usually quite imprecise (e.g. requiring a 'good environmental status' or 'good ecological status' by a given date) and the ways of arriving to the goals are to be elaborated through a continuous adaptive process.

The full legal implications of this relatively recent shift are not yet clear. Who will fill the new type of instrument with material requirements and under what level of government supervision? Will this provide increased normative power to participatory mechanisms or will the uncertainty be filled on an ad hoc basis by courts, as was indicated by the ECJ's judgment in the Weser judgment (Langlet), or will the distinction between 'hard' and 'soft' rules gradually lose relevance? Our case studies suggest that all those developments take place.

A key document for governing the most important environmental challenges to the Baltic Sea is the BSAP. The legal status of this document is not entirely clear. While the reduction targets are clearly non-binding, the plan as a whole still represents a tool for implementing the MSFD and could thereby involve a stronger status under EU law (Bohman).

'Soft' rules and other policy tools may appear unsatisfactory from a purely legal perspective, lacking to some extent the desired stability and predictability. However, in a broader perspective, goal-based rules involve a number of benefits.

Goal based rules/tools create a higher degree of flexibility and adaptability to overcome implementation problems that may arise due local variations as regards both the object of the rules (e.g. different environmental requirements or status) or the institutional implementation setting (e.g. lack of resources). Soft rules are more 'case sensitive' and can therefore result in higher implementation and goal achievement rates. In addition, soft rules also tend to include, especially when implemented within governance institutions, a broader degree of stakeholder and/or public participation, leading to a higher degree of knowledge and legitimacy, also improving rule acceptance and, thus, goal achievement (Jetoo).

The flexible approach to governance highlights the goals before the process, which is a beneficial way to minimize the risks of implementation failure in a multi-level and multi-actor system. This flexibility also corresponds with changing socio-spatial relations within the BSR (as for example the new members of the EU), as noted by Söderström & Kern regarding the development and implementation of EAM. This has created a new governance reality which exists in parallel with more traditional 'command-and-control'-based specific standards for certain emissions, substances etc.

The palette of soft policy tools include funding and other economic steering mechanisms, information and knowledge transfer based tools. It seems as if the most evident steering mechanisms in the BSR governance are projects. Projects are temporal mechanisms which steer activities in the region, almost always trough networks (Grönholm). In this area, too, the EU is a key player with by far the largest project budget. Our articles include a number of examples where EUSBSR projects have played a crucial role in advancing implementation (Westholm, Keessen, Jetoo). However, projects entail drawbacks from a temporal perspective as they are short-lived by nature and the challenges often require long-term measures. If projects are to succeed in their role as a successful governance instrument, there is a need for a systematic system that caters for integration of information and knowledge diffusion between the governance actors in the region. There is no such system today. The EUSBSR aspires to have that role, but has several shortcomings.

The EU uses projects to steer the governance agenda of the region. While the EU is a formal member of rather few networks, most BSR networks are, at least to some extent, dependent on EU funding, the main exceptions being the Nordic Council and the Nordic Council of Ministers. Put differently, the EU has created a dependency, by using projects as tools for understanding the problems of the region, and for dealing with them.

3.4.3. Mixing static rules and process-oriented rules

Process-oriented rules allow taking into account specific ecological and other diverging needs of sub-regions. At the EU and international levels this allows taking into account the diverging conditions and special needs in different marine regions of the EU, but differing conditions also exist at national and sub-national level or scale. Process-oriented rules also cater for 'movable goal posts' and hence permit adaptation to changes in ecosystems and other developments and are therefore valuable in areas where there is uncertainty and requirements to adapt.

Another benefit of generic, process-oriented rules, is that they – at least potentially – cover new environmental concerns that are not subject to any other regulation (e.g. acidification of the oceans, chemical mixtures etc.) [14]. However, the effects of such a broadening of the material scope of the rules is difficult to assess at this point, since the new generation of water and marine policy directives have not yet been applied (as far as is known) for such issues in practice.

On the other hand, the delegation that process-oriented rules entails may easily have the effect that responsibility is shifted downwards in the government hierarchy (to regions or local governments) and that stakeholders at different levels are uncertain of their responsibilities (Westholm).

So far, at least, case law on the process-oriented maritime directives in the EU has been limited. However, the Weser Case gives an indication of a strict implementation of the non-deterioration obligation in the WFD, which has resulted in new challenges, such as excessive calls for exoneration, which may turn out to be counterproductive for the objective (of both the Directive and the Judgment) to protect the marine environment (Langlet).

3.4.4. Mixing different kinds of substantive requirements

In substantive terms, the most obvious trend that runs through all environmental topics considered, at all regulatory levels, is the increasing focus on goal-oriented, ecosystem-oriented and process-

oriented rules, which are also rather unspecific in their wording. This development has opened up for more flexible and adaptive solutions, which may vary from one region or state to another, and a new role for institutions and also for a whole new range of less formal steering instruments and a broader range of persons involved in the overall governance setting. On the other hand, the vagueness of the 'new generation' of marine regulatory instruments has consequences for enforcing the standards. Rules that are too vague can simply not be enforced in the classical way. The case studies suggest that the reaction to this regulatory development has differed between sectors.

For the Baltic Sea, the move towards ecosystem-based rules, in particular the development at the EU-level, has meant a considerable revitalization of environmental management, which is particularly visible in key sectors such as eutrophication and maritime spatial planning. Ecosystem-based approaches have provided an opportunity for the Union to depart from the idea that a particular type of environmental regulation is suitable for all its marine regions. Instead, the flexible goals permit the Union to delegate more detailed target setting and monitoring to individual regions while still being in regulatory control (Langlet). This has provided a new impetus for EU-induced interaction and cooperation in the Baltic Sea. Even if this inter-relationship is far from straightforward, in practice and in law (Bohman), the system with increased delegation of power to ecological regions, and in the case of the Baltic Sea, to HELCOM, has worked well so far and is sometimes hailed as a model ocean governance system from the EU's side.[2]

Yet, the shift towards ecological goals as the target of regulation has replaced neither the validity of nor the need for specific sector-based regulation. The old 'command-and-control'-based rules that target individual substances or activities remain relevant and applicable, albeit that this form of marine environmental protection rules have received less attention in the past decade. There is a risk that the new approach to governance contributes to ignoring 'traditional' rules, such as, for example, the EU directives on nitrates, urban wastewater etc., which may be in need of adjustment or reinforcement [15], paras 18–102. Rather, it seems clear, also from the selection of matters discussed here, that different environmental issues require different regulatory tools. To some extent sector-based specific rules may even be the most effective means of reaching a good environmental status and thereby support and form an integral part of ecosystem-based strategies. However, the ecosystem-based approach necessarily involves a certain local focus or scale and is not necessarily suitable for matters that are mainly governed by global regulation, such as ship-source pollution.

The EU rules discussed in this volume appear to be fairly extreme on this scale in the sense that they will either situate themselves in the category of specific standards for clearly defined sectoral activities, or in the category of ecosystem-based 'catch-all' rules that are process-oriented and unspecific in terms of material obligations. In between these two extremes, there is naturally plenty of scope for regulatory measures that represent a mix between the two. In the BSAP, this type of mixes are found, but their position on the soft-hard law scale is, as was noted, uncertain. Other, even more creative, examples of rule-making could include rules aimed at incentivising environmental conduct in financial terms of which there are some examples at EU-level, such as notably the EU-based emission trading scheme for greenhouse gases [16] and the HELCOM 'no special fee' principle relating to ship-generated waste [17], which has in part been adopted by the EU [18]. The possibility of establishing a 'nutrient trading scheme' to combat eutrophication in the Baltic Sea has been discussed, but has not proceeded see e.g. [19,20]. Tax schemes, conditional permits, subsidies etc. are other incentivising tools that are applied at national level in certain states, but there are no Baltic Sea-wide initiatives of this kind yet.[3]

3.4.5. Broadening the range of stakeholders

Network governance approaches typically allow for a broader participation both in the policy making phase as well as the implementation and follow-up phases in the policy process. Stakeholder and public participation is evident in all policy sectors, on all levels (Jetoo). In the BSR, the BSAP process has had the effect of broadening the range of players involved in policy-making. In some areas this has had a direct impact on the policy making process, through the involvement of scientists, NGOs etc. In other areas, the process is still very much government-driven, even if many stakeholders are involved; in the latter case their involvement aim at influencing and contributing to the government's regulation.

Every single article in this issue indicates a broadening of the range of players involved in the governance of the field in question over the past decades. The trend seems to be growing and the role of non-governmental players involved appears to be of increasing relevance in all fields irrespective of whether they are highly regulated or not.

Governance institutions with a vague or legally uncertain foundation (of which there are several in the BSR) tend to have looser mandates and, to some extent also less focus in their work. In addition, they cannot, due to their status, adopt legal instruments. However, in view of the larger role given to non-governmental actors, this absence of normative powers loses relevance. Bodies like the CBSS or the BSRBCC make their impact outside the realm of legislation and their invitation to the table of regulators and vice versa, strengthens the dialogue between them. They have adopted a broad range of issues and to some extent succeeded, perhaps even too well. However, as the CBSS example illustrates, a vague internal mandate may easily lead to a somewhat blurred focus of the work (Rosas & Koivurova).

4. Concluding observations

The above illustrates how the governance of the Baltic Sea has got more complex and multi-faceted at many levels and in many different ways. The remaining task is to consider whether we, through these observations, have learnt something that could induce more generally valid statements on the governance of the Baltic Sea. This is done by returning to the key questions posed at the beginning of this concluding chapter.

4.1. How do the regulatory layers interact?

Regulatory layers have become increasingly intertwined in a complex web that keeps evolving. The most stable relationship between different regulatory layers appear to exist where the matter is governed by global, binding rules that other layers seek to implement and/or complement. Increasingly, however, environmental challenges in the BSR relate to matters which are subject to no such governing global legal framework. The EU has manifested its self as the clearly dominating regulatory layer for Baltic Sea governance, regarding legislation as well as other steering mechanisms.

4.2. What complementarity is there in terms of the substance and normative strength of the rules?

The move towards ecosystem-based management has also had the

[2] Recently, for example, the EU Environment Commissioner, Mr. Karmenu Vella, while hosting the HELCOM Ministerial Meeting in Brussels on 6 March 2018, held that "HELCOM is a true example of successful regional ocean governance." [1].

[3] For a number of bottom-up ideas to encourage cost-efficient nutrient reduction measures see also the Nutritrade project which implements pilot measures and establishes a Baltic Sea wide nutrient offset platform for identifying and financing reduction measures [21].

effect of moving away from hard and specific rules. The simple labelling of the status of the new type of rules rule as 'hard or 'soft' is increasingly difficult. However, hard rules still exist, even for addressing eutrophication, and continue to serve a purpose. The problem is rather the lack of easy targets for simple prohibition-oriented rules. The market for so-called 'low-hanging fruit', where important reductions could be achieved by targeting point-sources appears to be largely drained by now, at least in certain parts of the BSR, which places increasing demands of creativity for policy makers to find new ways to incentivise sustainable action. In this area, the wider stakeholder participation that the more recent regulatory tendencies have brought about plays an important role already today.

4.3. How does the interaction between law and other policy instruments work?

There is a degree of complementarity between different categories of steering mechanisms. Where the rules are clear and problems more simple, there is less need for other instruments than clear-cut regulatory instruments to deal with them. However, for complex problems (like eutrophication and climate change) simple solutions are not available, certainly not in a multi-level and multi-sectoral governing environment. A mix of policy measures is needed, therefore also a mix of hard law, soft law and other governance tools. The optimal mix of tools depends on the matter to be governed and hence differs from one case to another, and may also differ depending on the governance level (regional, national, local) concerned. The goals of the action appears decisive for defining the best institutional structure for implementation and policy making.

4.4. What type of governance 'works' in the Baltic Sea region?

It is difficult to characterise the current governance structures in the BSR as a success from an environmental point of view. Various recent studies have suggested that the current governance tools are not effectively dealing with the challenges facing the Baltic Sea see notably [15,22,23]. Environmental threats that have been successfully addressed have usually been regulated by means of simple and harsh rules, usually at global level, such as the complete prohibitions of toxic substances such as dioxin, DDT and PCB. Such substances are usually point-source and hence easy to target, but they also address environmental problems of general worldwide concern that have been covered by international conventions. For environmental concerns that are particularly relevant for the Baltic Sea, e.g. eutrophication, the EU has a number of EU-wide 'point-source' rules (e.g. on wastewater treatment, nitrates etc.), but they have not been able to address to nutrition influx and seem increasingly outdated in terms of their material requirements. The new goal-based rules have not, so far at least, managed to generate new types of ambitious reduction commitments.[4] It seems that the judiciary, notably the Court of Justice of the European Union, is prepared to take an active role in concretizing the content of the more recent goal-oriented marine management directives.

[4] See also European Court of Auditors report: "The Member States' plans for achieving HELCOM nutrient reductions are based on their river basin management plans prepared on the basis of the water framework directive. These plans lack ambition as they focus on 'basic measures' for implementing EU directives in relation to the specific activities causing nutrient pollution, mainly urban waste water and agriculture. Less focus is put on measures for the control of diffuse sources of nutrients and on 'supplementary measures' as set out in the water framework directive. Measures are established on the basis of insufficient information. They also lack targets and appropriate indicators for the assessment of achievements made in reducing nutrient loads into waters." [15, Executive Summary, para V].

4.5. Are the findings relevant beyond the Baltic Sea?

Even if the environmental problems may differ between marine regions, many of the above conclusions are probably valid with respect to marine management in other regions too. Especially the ways of how to approach (process) regional problems and concern can probably be exported outside the BSR. Even though there is no optimal way to govern different problems related to marine regions, it appears sensible to listen to the environment – natural, political and human – when creating institutions to deal with problems at hand. Neither HELCOM/BSAP nor the EUSBSR can as such be transplanted into in other regions without local adaptation to political and ecological realities. That said, the long-standing and thorough attention given to marine governance in the BSR still offers unique insights into regional cooperation on a very broad basis,[5] not least with respect to the flexible and adaptive governance mechanisms that operate when protecting a regional sea under multiple threats.

Funding and declaration of interest

This work was supported by the BaltReg Project / Åbo Akademi University under the funding of the Academy of Finland [grant decision number 290331 / 2015] and by the Åbo Akademi University Profiling area 'The Sea' under the funding of the Academy of Finland [grant decision number 311944 / 2017]. The funding sponsors had no role in the design of the study; in the collection, analyses, or interpretation of data; in the writing of the manuscript, and in the decision to publish the results. The author declares no conflict of interest.

References

[1] HELCOM Press Release on 6 March 2018, Ministerial Meeting: HELCOM Agreement Reached on Next Steps for a healthy Baltic Sea. Available online: ⟨www.helcom.fi/news/Pages/HELCOM-agreement-reached-on-next-steps-for-a-healthy-Baltic-Sea.aspx⟩ (Accessed 6 July 2018).
[2] HELCOM website, Action areas, Maritime spatial planning, Ecologically and biologically significant areas: ⟨www.helcom.fi/action-areas/maritime-spatial-planning/ecologically-biologically-significant-areas⟩ (Accessed 6 July 2018).
[3] UNEP Convention on Biological Diversity UNEP/CBD/COP/DEC/XI/17, 5 December. Available online: ⟨www.cbd.int/doc/decisions/cop-11/cop-11-dec-17-en.pdf⟩ (Accessed 6 July 2018).
[4] H. Ringbom, M. Joas, Concluding remarks: regulatory gaps and broader governance patterns in the Baltic Sea, in: H. Ringbom (Ed.), Regulatory Gaps in Baltic Sea Governance, Springer, the Netherlands, 2017, , https://doi.org/10.1007/978-3-319-75070-5.
[5] A.-S. Hermanson, Environmental concerns within the Baltic Sea Region: a Nordic–Baltic comparison, in: M. Joas, D. Jahn, K. Kern (Eds.), Governing a Common Sea: Environmental Policies in the Baltic Sea Region, Earthscan, 2008.
[6] M.S. Andersen, J.D. Liefferink, European Environmental Policy: the Pioneers, Series: Issues in Environmental Politics, Manchester University Press, Manchester, 1997.
[7] K. Kern, M. Joas, D. Jahn, Governing a common sea: comparative patterns for sustainable development, in: M. Joas, D. Jahn, K. Kern (Eds.), Governing a Common Sea: Environmental Policies in the Baltic Sea Region, Earthscan, 2008.
[8] B. Evans, M. Joas, S. Sundback, K. Theobald, Governing Sustainable Cities, Earthscan, London, 2005.
[9] COM, 028 final: A European Strategy for Plastics in a Circular Economy, 2018.
[10] COM, 340 final: Proposal for a Directive on the reduction of the impact of certain plastic products on the environment, 2018.
[11] A. Rosas, EU external relations: exclusive competence revisited, 38 Fordham Int. Law J. 4 (2015) 1073–1096.
[12] K. Kern, Governance for sustainable development in the Baltic Sea Region, J. Balt. Stud. 42 (1) (2011) 21–35.
[13] S. Gänzle, D. Stead, F. Sielker, T. Chilla, Macro-regional Strategies, Cohesion Policy and Regional Cooperation in the European Union: Towards a Research Agenda, Political Studies Review, 2018.
[14] L. Gipperth, T. Backhaus, The lack of regulation of chemical mixtures and its legal

[5] See in this respect T.B.H. Reusch [24], where the authors argue, inter alia, that "the Baltic Sea can serve as a time machine to study consequences and mitigation of future coastal perturbations, due to its unique combination of an early history of multistressor disturbance and ecosystem deterioration and early implementation of cross-border environmental management to address these problems".

consequences in the Baltic Sea area, in: H. Ringbom (Ed.), Regulatory Gaps in Baltic Sea Governance, Selected Issues, 18 Springer Verlag, MARE Publication Series, 2018, pp. 69–87, , https://doi.org/10.1007/978-3-319-75070-5_5.
[15] The European Court of Auditors, Special report No. 03/2016: Combating eutrophication in the Baltic Sea: further and more effective action needed, available online: 〈www.eca.europa.eu/en/Pages/DocItem.aspx?Did=35757〉 (Accessed 6 July 2018).
[16] Directive 2003/87/EC of the European Parliament and of the Council of 13 October establishing a scheme for greenhouse gas emission allowance trading within the Community, 2003.
[17] HELCOM, Recommendation 28/1, Application of the No-Special-Fee System to Ship-Generated Wastes in the Baltic Sea Area, adopted 7 March, 2007.
[18] Directive 2000/59/EC of the European Parliament and of the Council of 27 November on port reception facilities for ship-generated waste and cargo residues, 2000.
[19] Report by the Nordic Environment Finance Corporation (NEFCO), Framework for a nutrient quota and credits' trading system for the Contracting Parties of HELCOM in order to reduce eutrophication of the Baltic Sea, published in HELCOM Doc. 2/12 at in: Proceedings of the 29th HELCOM meeting in March, 2008.
[20] K. Malla, Legal Prerequisites for a nutrient trading scheme to control Eutrophication in the Baltic Sea, 11 J. Eur. Environ. Plan. Law 3 (2014) 272–302.
[21] NutriTrade project website: 〈http://nutritradebaltic.eu〉 (Accessed 6 July 2018).
[22] The Boston Consulting Group, Turning Adversity Into Opportunity – A Business Plan for the Baltic Sea, Commissioned by the WWF. Available online: 〈www.wwf.se/source.php/1536768/Ostersjorapporten%202013%20-%20BCG%20Turning%20Adversity%20into%20Opportunity%20Aug%202013.pdf〉 (Accessed 6 July 2018).
[23] WWF Baltic Sea Action Plan Scorecard, available online: 〈http://wwf.panda.org/wwf_news/?324530/WWF-Baltic-Sea-Action-Plan-Scorecard-2018〉 (Accessed 6 July 2018).
[24] T.B.H. Reusch et al., The Baltic Sea as a time machine for the future coastal ocean, Science Advances, 9May. Available online: 〈http://advances.sciencemag.org/content/4/5/eaar8195〉 (Accessed 6 July 2018).